

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 492 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : YES
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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MADHAVIBEN HIMANSUBHAI DEVANI

Versus

LATABEN SURESHBHAI PAVAGADI  
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Appearance:

MR YATIN SONI for Petitioner  
MR Ashish Dagli for Mr. YOGESH S LAKHANI  
for the Respondent.  
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CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 21/07/2000

ORAL JUDGEMENT

This Revision Applicastion centres round  
the question as to whether the plaintiff can take  
advantage of two remedies available for him to secure the  
amount claimed in summary suit.

2. The respondent-plaintiff filed summary suit no. 70 of 1996 in the Court of the Civil Judge (S.D.), Rajkot for the recovery of Rs. 1,67,900/-. The respondent-plaintiff also filed an application exh. 5 for injunction under Order 39, Rules 1 and 2 read with section 151 of Civil Procedure Code. The 8th Joint Civil Judge (S.D.), Rajkot by his order dated 27th November, 1996 allowed that application and directed the defendant not to transfer the Maruti car bearing registration No. GJ-3-K-1795 of 1996 model till the final disposal of the suit and that order is still in operation. The respondent-plaintiff had also taken out a summons for judgment vide application exh. 20 on 10.2.99.

3. The petitioner-defendant resisted and objected to the said application by filing an affidavit-in-reply and written submissions. The 5th Joint Civil Judge (J.D.), Rajkot after hearing the parties allowed the said application of the plaintiff and by the order dated 12th January, 1999 the defendant was permitted to defend the suit on the condition to deposit Rs.90,000/- within a period of three months from the date of the order. That order was challenged in this Court by means of filing Civil Revision Application No.170 of 1999 wherein it was pointed out by the learned counsel for the petitioner that the defendant has already been enjoined from transferring or alienating his Maruti car. As such, asking to deposit the amount of Rs.90,000/- amounts to imposing double surety which is not permissible in law. It was also pointed out by the learned advocate for the respondent-original plaintiff that the Maruti car was hypothecated to Gujarat Lease Finance Company Ltd. Taking the notice of the fact and relying upon reported decisions of this Court in Civil Revision Application no. 2000 of 1970 decided on 20.6.70 and Civil Revision Application no.222 of 1963 decided on 21st August, 1983, this Court did not find any illegality in the impugned order and Revision Application no.170 of 1999 was dismissed by the order dated 12th February, 1999.

4. The learned advocate for the petitioner communicated a copy of the order to the defendant. The defendant informed his advocate that the said Maruti car has already been released from higher purchase agreement/hypothecation as the defendant has already paid all the instalments to the financier, namely Gujarat Lease Finance Ltd., Ahmedabad. The defendant again filed Misc. Civil Application no. 287 of 1999 for review of the earlier order dated 12th February, 1999. The Review Application was decided on 4th October, 1999 and the

learned advocate for the petitioner was permitted to withdraw the Review Application with a liberty to raise the plea before the Court concerned alongwith the relevant material. Permission was granted and the Review Application was disposed of as withdrawn by an order dated 4th October, 1999. Pursuant to the order dated 4th October, 1999, the petitioner filed an application before the trial court for re-consideration of the application exh. 20 and decide afresh in light of the observations made by this Court.

5. The trial court, after considering the fact that the plaintiff has shown the document of higher purchase agreement which has already been cancelled and the defendant has become owner of the Maruti car in question, but he wanted to place his car in the surety as directed by the order of injunction and the defendant does not want to deposit Rs. 90,000/-. The trial court has considered as to whether the Maruti car can be accepted as a surety instead of the amount of Rs. 90,000/-. The trial court considered the fact that the vehicle Maruti car is a movable property and the price of the car will decrease day by day and the possession of Maruti will remain with the defendant only. The Maruti car is a movable property and may meet with an accident and till the disposal of the suit, the value of Maruti car will be Rs. 30,000/- or Rs.40,000/-. If the court accepts this security, then the purpose of filing the summary suit will not be served. Hence, he directed the petitioner defendant to deposit Rs. 45,000/- in the court within two months and the defendant was also directed not to transfer Maruti car till the disposal of the suit and the defendant was also directed to give an undertaking in the court that if any accident or anything happens, then the defendant will be personally liable to deposit Rs. 45,000/- in the court.

6. The petitioner-defendant has therefore, preferred the present Civil Revision Application against the judgment and order dated 1st May, 2000 of the lower court on the ground that the respondent-plaintiff has opted to obtain an order of injunction restraining the petitioner from transferring or alienating the property and thereafter, he applied for the summons for judgment wherein leave to defendant was granted subject to the condition that the defendant should deposit an amount of Rs.90,000/- within a specific period, meaning thereby that the court has directed the petitioner to give double surety which is not permissible in the eye of law. He also relied on the judgment of this Court delivered in

CRA No.222 of 1963 decided on 21st August, 1963 and CRA No.200 of 1970 decided on 29.6.70 wherein double surety has not been permitted by this Court. In the first case, the suit was for the recovery of Rs.2500/- with interest and costs. The surety by way of attachment before judgment was for Rs.2800/- in cash. Thereafter, leave to defend was granted with a condition to deposit Rs.2500/- and the amount of Rs.2500/- of leave to defend security was cancelled by the order dated 21st August, 1963. In the second decision, the claim was for Rs.39,529.67 ps. The injunction was granted before judgment directing the defendant in that case not to sell the immovable bungalow worth Rs.80,000/-. The leave to defend was granted with a condition to deposit Rs.10,000/-. This Court deleted the condition of leave to defend of Rs.10,000/- as surety by way of immovable property was also there.

7. The learned counsel for the other side contended that the decisions cited by the learned advocate for the petitioner have the effect to the extent that the amount of leave to defend was more than the amount of claim and in the second case, the amount of immovable bungalow was more than the claim made by the plaintiff in that case. Hence, this Court in both the cases was fully justified in setting aside the order regarding condition of leave to defend and the amount to be deposited pursuant to the orders of the courts below. In the present case, the Maruti car in question is an movable property and the value of that car would decrease day by day. The court below was fully justified in appreciating the material on record and directing the petitioner to deposit Rs.45,000/- in cash and in maintaining the injunction order already granted by the court concerned.

8. I have carefully considered the contentions of the learned counsel for the parties. No doubt, the object of direction to deposit certain amount by the court in a summary suit is to protect the right of the plaintiff. But once the right of the plaintiff has already been protected and for that purpose, he has applied for an injunction restraining the defendant from transferring or alienating whatsoever property, then the Court should not pass the order directing the defendant to give any other surety or security for the claim of the plaintiff. In the present case, once the petitioner-plaintiff has already opted the procedure to get the petitioner enjoined from transferring or alienating the Maruti car of which he was owner of that car at the relevant time. The learned counsel for the

petitioner pointed out that the affidavit was filed before the trial court in the year 1999 that the value of the car is more than Rs.1,50,000/- to Rs.1,60,000/- and no affidavit controverting the value mentioned in the affidavit has been filed by the other side. Hence, the value of the property cannot be said to have been diminished within a year from Rs.1,50,000/- to Rs.45,000/-. Once the party has opted for one of the sureties by way of injunction order, if he again applies for the second surety by way of a direction to deposit certain amount, then that would amount to double surety which is not permissible in the eye of law. In the present case, the respondent-plaintiff has already obtained an injunction order, hence the court below committed an error in passing the order directing the petitioner to deposit Rs. 45000/- as condition of leave to defend and maintaining the order of injunction.

9. This Court, in revisional jurisdiction did not think it proper to interfere when it was pointed out that the property has already been hypothecated to the finance company but the property had already been released from hypothecation and the hire purchase agreement has already been cancelled though the petitioner-defendant was the owner of that car. Had this Court not been misdirected by the learned counsel for the plaintiff-respondent, the revision application would have been considered on merits and there was a probability that the order of conditional leave to defend might have been set aside at an earlier occasion by this Court on the ground that double surety is not permissible in law. Unless the Court comes to the conclusion that the property was not sufficient for the surety at the time when the property was directed not to be transferred or the value of the property has been decreased due to some subsequent event, the demand for the second surety would not be justified. In the present case, the order directing the petitioner to deposit Rs. 90,000/- which has been subsequently reduced to Rs.45,000/- without finding the value of the property decreased due to subsequent event and maintaining the order of injunction is against principle of law and is not maintainable in the eye of law. Accordingly, the order dated 1.5.2000 below exh. 62 in Summary suit no.17 of 1996 passed by the 6th Joint Civil Judge (S.D.), Rajkot is hereby set aside. Rule is made absolute accordingly with no order as to costs and interim relief granted by this Court stands vacated.

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s Court on the ground that double surety is not permissible in law. Unless the Court comes to the conclusion that the property was not sufficient for the surety at the time when the property was directed not to be transferred or the value of the property has been decreased due to some subsequent event, the demand for the second surety would not be justified. In the present case, the order directing the petitioner to deposit Rs. 90,000/- which has been subsequently reduced to Rs. 45,000/- without finding the value of the property decreased due to subsequent event and maintaining the order of injunction is against principle of law and is not maintainable in the eye of law. Accordingly, the order dated 1.5.2000 below exh. 62 in Summary suit no. 17 of 1996 passed by the 6th Joint Civil Judge (S.D.), Rajkot is hereby set aside. Rule is made absolute accordingly with no order as to costs and interim relief granted by this court stands vacated.

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